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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/954,789	09/12/2001	Charlie Ricci	018413-378	8809

7590

06/05/2003

Robert E. Krebs
BURNS, DOANE, SWECKER & MATHIS, L.L.P.
P.O. Box 1404
Alexandria, VA 22313-1404

EXAMINER

SHARAREH, SHAHNAM J

ART UNIT

PAPER NUMBER

1617

DATE MAILED: 06/05/2003

M

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application N .

09/954,789

Applicant(s)

RICCI ET AL.

Examiner

Shahnam Sharareh

Art Unit

1617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 May 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 21 May 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 16 and 20-29.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____


RUSSELL TRAVERS
PRIMARY EXAMINER
GROUP 1200

Continuation of 5. does NOT place the application in condition for allowance because: Applicant's arguments are directed to unclaimed limitations. Applicant argues that McCrory's device is used for aneurysms with bubble like sacs and that modification of McCrory's device to substitute a stent graft would destroy the ability of McCrory's device to allow blood flow into perforating vessels. Accordingly, Applicant argues that the cited references are not combinable. In response, Examiner states that the scope of the pending claims merely requires a stent graft in a kit in combination with a catheter and a polymeric composition. McCrory teaches combination of a stent, a catheter and a polymeric composition. Accordingly, it was concluded that adding a stent graft to McCrory's system or replacing the McCrory's stent with a stent graft in view of Chuter and May would have been within the level of ordinary skill in the art of assembling kits for surgical convenience. The ordinary skill in the art does not need to achieve the clinical outcome of McCrory, rather, facilitate ease of access to surgical elements. Contrary to Applicant's arguments, there is no requirement in the rejection that the stent device of McCrory be per se modified. Nor there is any requirement in the rejection to meet the blood flow characteristics of McCrory's device. Rather, the issue is whether assembling a kit comprising the claimed components would have been prima facie obvious in view of the cited art. The cited references meet all elements of the instant claims. Accordingly, the rejection is maintained.